



106TH CONGRESS
1ST SESSION

S. 1445

To amend titles XVIII and XIX of the Social Security Act to prevent abuse of recipients of long-term care services under the Medicare and Medicaid programs.

IN THE SENATE OF THE UNITED STATES

JULY 27, 1999

Mr. KOHL (for himself and Mr. REID) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend titles XVIII and XIX of the Social Security Act to prevent abuse of recipients of long-term care services under the Medicare and Medicaid programs.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Patient Abuse Preven-
5 tion Act”.

6 **SEC. 2. ESTABLISHMENT OF PROGRAM TO PREVENT ABUSE**
7 **OF NURSING FACILITY RESIDENTS.**

8 (a) NURSING FACILITY AND SKILLED NURSING FA-
9 CILITY REQUIREMENTS.—

1 (1) MEDICAID PROGRAM.—Section 1919(b) of
2 the Social Security Act (42 U.S.C. 1396r(b)) is
3 amended by adding at the end the following:

4 “(8) SCREENING OF NURSING FACILITY WORK-
5 ERS.—

6 “(A) BACKGROUND CHECKS ON APPLI-
7 CANTS.—Subject to subparagraph (B)(ii), be-
8 fore hiring a nursing facility worker, a nursing
9 facility shall—

10 “(i) give the worker written notice
11 that the facility is required to perform
12 background checks with respect to appli-
13 cants;

14 “(ii) require, as a condition of employ-
15 ment, that such worker—

16 “(I) provide a written statement
17 disclosing any conviction for a rel-
18 evant crime or finding of patient or
19 resident abuse;

20 “(II) provide a statement signed
21 by the worker authorizing the facility
22 to request the search and exchange of
23 criminal records;

24 “(III) provide in person a copy of
25 the worker’s fingerprints; and

1 “(IV) provide any other identi-
2 fication information the Secretary
3 may specify in regulation;

4 “(iii) initiate a check of the data col-
5 lection system established under section
6 1128E in accordance with regulations pro-
7 mulgated by the Secretary to determine
8 whether such system contains any disquali-
9 fying information with respect to such
10 worker; and

11 “(iv) if that system does not contain
12 any such disqualifying information—

13 “(I) request that the State ini-
14 tiate a State and national criminal
15 background check on such worker in
16 accordance with the provisions of sub-
17 section (e)(8); and

18 “(II) furnish to the State the in-
19 formation described in subclauses (II)
20 through (IV) of clause (ii) not more
21 than 7 days (excluding Saturdays,
22 Sundays, and legal public holidays
23 under section 6103(a) of title 5,
24 United States Code) after completion

1 of the check against the system initi-
2 ated under clause (iii).

3 “(B) PROHIBITION ON HIRING OF ABUSIVE
4 WORKERS.—

5 “(i) IN GENERAL.—A nursing facility
6 may not knowingly employ any nursing fa-
7 cility worker who has any conviction for a
8 relevant crime or with respect to whom a
9 finding of patient or resident abuse has
10 been made.

11 “(ii) PROVISIONAL EMPLOYMENT.—
12 After complying with the requirements of
13 clauses (i), (ii), and (iii) of subparagraph
14 (A), a nursing facility may provide for a
15 provisional period of employment for a
16 nursing facility worker pending completion
17 of the check against the data collection
18 system described under subparagraph
19 (A)(iii) and the background check de-
20 scribed under subparagraph (A)(iv). Such
21 facility shall maintain direct supervision of
22 the worker during the worker’s provisional
23 period of employment.

24 “(C) REPORTING REQUIREMENTS.—A
25 nursing facility shall report to the State any in-

1 stance in which the facility determines that a
2 nursing facility worker has committed an act of
3 resident neglect or abuse or misappropriation of
4 resident property in the course of employment
5 by the facility.

6 “(D) USE OF INFORMATION.—

7 “(i) IN GENERAL.—A nursing facility
8 that obtains information about a nursing
9 facility worker pursuant to clauses (iii) and
10 (iv) of subparagraph (A) may use such in-
11 formation only for the purpose of deter-
12 mining the suitability of the worker for
13 employment.

14 “(ii) IMMUNITY FROM LIABILITY.—A
15 nursing facility that, in denying employ-
16 ment for an applicant (including during
17 the period described in subparagraph
18 (B)(ii)), reasonably relies upon information
19 about such applicant provided by the State
20 pursuant to subsection (e)(8) or section
21 1128E shall not be liable in any action
22 brought by such applicant based on the
23 employment determination resulting from
24 the information.

1 “(iii) CRIMINAL PENALTY.—Whoever
2 knowingly violates the provisions of clause
3 (i) shall be fined in accordance with title
4 18, United States Code, imprisoned for not
5 more than 2 years, or both.

6 “(E) CIVIL PENALTY.—

7 “(i) IN GENERAL.—A nursing facility
8 that violates the provisions of this para-
9 graph shall be subject to a civil penalty in
10 an amount not to exceed—

11 “(I) for the first such violation,
12 \$2,000; and

13 “(II) for the second and each
14 subsequent violation within any 5-year
15 period, \$5,000.

16 “(ii) KNOWING RETENTION OF WORK-
17 ER.—In addition to any civil penalty under
18 clause (i), a nursing facility that—

19 “(I) knowingly continues to em-
20 ploy a nursing facility worker in viola-
21 tion of subparagraph (A) or (B); or

22 “(II) knowingly fails to report a
23 nursing facility worker under subpara-
24 graph (C); shall be subject to a civil
25 penalty in an amount not to exceed

\$5,000 for the first such violation,
and \$10,000 for the second and each
subsequent violation within any 5-year
period.

“(F) DEFINITIONS.—In this paragraph:

“(i) CONVICTION FOR A RELEVANT
CRIME.—The term ‘conviction for a rel-
evant crime’ means any Federal or State
criminal conviction for—

“(I) any offense described in
paragraphs (1) through (4) of section
1128(a); and

“(II) such other types of offenses
as the Secretary may specify in regu-
lations, taking into account the sever-
ity and relevance of such offenses, and
after consultation with representatives
of long-term care providers, represent-
atives of long-term care employees,
consumer advocates, and appropriate
Federal and State officials.

“(ii) DISQUALIFYING INFORMATION.—
The term ‘disqualifying information’ means
information about a conviction for a rel-

1 evant crime or a finding of patient or resi-
2 dent abuse.

3 “(iii) FINDING OF PATIENT OR RESI-
4 DENT ABUSE.—The term ‘finding of pa-
5 tient or resident abuse’ means any sub-
6 stantiated finding by a State agency under
7 subsection (g)(1)(C) or a Federal agency
8 that a nursing facility worker has
9 committed—

10 “(I) an act of patient or resident
11 abuse or neglect or a misappropriation
12 of patient or resident property; or

13 “(II) such other types of acts as
14 the Secretary may specify in regula-
15 tions.

16 “(iv) NURSING FACILITY WORKER.—
17 The term ‘nursing facility worker’ means
18 any individual (other than any volunteer)
19 that has direct access to a patient of a
20 nursing facility under an employment or
21 other contract, or both, with such facility.
22 Such term includes individuals who are li-
23 censed or certified by the State to provide
24 such services, and nonlicensed individuals
25 providing such services, as defined by the

1 Secretary, including nurse assistants,
2 nurse aides, home health aides, and per-
3 sonal care workers and attendants.”.

4 (2) MEDICARE PROGRAM.—Section 1819(b) of
5 the Social Security Act (42 U.S.C. 1395i-3(b)) is
6 amended by adding at the end the following:

7 “(8) SCREENING OF SKILLED NURSING FACIL-
8 ITY WORKERS.—

9 “(A) BACKGROUND CHECKS ON APPLI-
10 CANTS.—Subject to subparagraph (B)(ii), be-
11 fore hiring a skilled nursing facility worker, a
12 skilled nursing facility shall—

13 “(i) give the worker written notice
14 that the facility is required to perform
15 background checks with respect to appli-
16 cants;

17 “(ii) require, as a condition of employ-
18 ment, that such worker—

19 “(I) provide a written statement
20 disclosing any conviction for a rel-
21 evant crime or finding of patient or
22 resident abuse;

23 “(II) provide a statement signed
24 by the worker authorizing the facility

1 to request the search and exchange of
2 criminal records;

3 “(III) provide in person a copy of
4 the worker’s fingerprints; and

5 “(IV) provide any other identi-
6 fication information the Secretary
7 may specify in regulation;

8 “(iii) initiate a check of the data col-
9 lection system established under section
10 1128E in accordance with regulations pro-
11 mulgated by the Secretary to determine
12 whether such system contains any disquali-
13 fying information with respect to such
14 worker; and

15 “(iv) if that system does not contain
16 any such disqualifying information—

17 “(I) request that the State ini-
18 tiate a State and national criminal
19 background check on such worker in
20 accordance with the provisions of sub-
21 section (e)(6); and

22 “(II) furnish to the State the in-
23 formation described in subclauses (II)
24 through (IV) of clause (ii) not more
25 than 7 days (excluding Saturdays,

1 Sundays, and legal public holidays
2 under section 6103(a) of title 5,
3 United States Code) after completion
4 of the check against the system initi-
5 ated under clause (iii).

6 “(B) PROHIBITION ON HIRING OF ABUSIVE
7 WORKERS.—

8 “(i) IN GENERAL.—A skilled nursing
9 facility may not knowingly employ any
10 skilled nursing facility worker who has any
11 conviction for a relevant crime or with re-
12 spect to whom a finding of patient or resi-
13 dent abuse has been made.

14 “(ii) PROVISIONAL EMPLOYMENT.—
15 After complying with the requirements of
16 clauses (i), (ii), and (iii) of subparagraph
17 (A), a skilled nursing facility may provide
18 for a provisional period of employment for
19 a skilled nursing facility worker pending
20 completion of the check against the data
21 collection system described under subpara-
22 graph (A)(iii) and the background check
23 described under subparagraph (A)(iv).
24 Such facility shall maintain direct super-

1 vision of the covered individual during the
2 worker's provisional period of employment.

3 “(C) REPORTING REQUIREMENTS.—A
4 skilled nursing facility shall report to the State
5 any instance in which the facility determines
6 that a skilled nursing facility worker has com-
7 mitted an act of resident neglect or abuse or
8 misappropriation of resident property in the
9 course of employment by the facility.

10 “(D) USE OF INFORMATION.—

11 “(i) IN GENERAL.—A skilled nursing
12 facility that obtains information about a
13 skilled nursing facility worker pursuant to
14 clauses (iii) and (iv) of subparagraph (A)
15 may use such information only for the pur-
16 pose of determining the suitability of the
17 worker for employment.

18 “(ii) IMMUNITY FROM LIABILITY.—A
19 skilled nursing facility that, in denying em-
20 ployment for an applicant (including dur-
21 ing the period described in subparagraph
22 (B)(ii)), reasonably relies upon information
23 about such applicant provided by the State
24 pursuant to subsection (e)(6) or section
25 1128E shall not be liable in any action

brought by such applicant based on the
employment determination resulting from
the information.

“(iii) CRIMINAL PENALTY.—Whoever
knowingly violates the provisions of clause
(i) shall be fined in accordance with title
18, United States Code, imprisoned for not
more than 2 years, or both.

“(E) CIVIL PENALTY.—

“(i) IN GENERAL.—A skilled nursing
facility that violates the provisions of this
paragraph shall be subject to a civil pen-
alty in an amount not to exceed—

“(I) for the first such violation,
\$2,000; and

“(II) for the second and each
subsequent violation within any 5-year
period, \$5,000.

“(ii) KNOWING RETENTION OF WORK-
ER.—In addition to any civil penalty under
clause (i), a skilled nursing facility that—

“(I) knowingly continues to em-
ploy a skilled nursing facility worker
in violation of subparagraph (A) or
(B); or

1 “(II) knowingly fails to report a
2 skilled nursing facility worker under
3 subparagraph (C);

4 shall be subject to a civil penalty in an
5 amount not to exceed \$5,000 for the first
6 such violation, and \$10,000 for the second
7 and each subsequent violation within any
8 5-year period.

9 “(F) DEFINITIONS.—In this paragraph:

10 “(i) CONVICTION FOR A RELEVANT
11 CRIME.—The term ‘conviction for a rel-
12 evant crime’ means any Federal or State
13 criminal conviction for—

14 “(I) any offense described in
15 paragraphs (1) through (4) of section
16 1128(a); and

17 “(II) such other types of offenses
18 as the Secretary may specify in regu-
19 lations, taking into account the sever-
20 ity and relevance of such offenses, and
21 after consultation with representatives
22 of long-term care providers, represent-
23 atives of long-term care employees,
24 consumer advocates, and appropriate
25 Federal and State officials.

“(ii) DISQUALIFYING INFORMATION.—

The term ‘disqualifying information’ means information about a conviction for a relevant crime or a finding of patient or resident abuse.

“(iii) FINDING OF PATIENT OR RESIDENT ABUSE.—The term ‘finding of patient or resident abuse’ means any substantiated finding by a State agency under subsection (g)(1)(C) or a Federal agency that a skilled nursing facility worker has committed—

“(I) an act of patient or resident abuse or neglect or a misappropriation of patient or resident property; or

“(II) such other types of acts as the Secretary may specify in regulations.

“(iv) SKILLED NURSING FACILITY WORKER.—The term ‘skilled nursing facility worker’ means any individual (other than any volunteer) that has direct access to a patient of a skilled nursing facility under an employment or other contract, or both, with such facility. Such term includes

1 individuals who are licensed or certified by
 2 the State to provide such services, and
 3 nonlicensed individuals providing such
 4 services, as defined by the Secretary, in-
 5 cluding nurse assistants, nurse aides, home
 6 health aides, and personal care workers
 7 and attendants.”.

8 (b) STATE REQUIREMENTS.—

9 (1) MEDICAID PROGRAM.—

10 (A) EXPANSION OF STATE REGISTRY TO
 11 COLLECT INFORMATION ABOUT NURSING FACIL-
 12 ITY EMPLOYEES OTHER THAN NURSE AIDES.—
 13 Section 1919 of the Social Security Act (42
 14 U.S.C. 1396r) is amended—

15 (i) in subsection (e)(2)—

16 (I) in the paragraph heading, by
 17 striking “NURSE AIDE REGISTRY” and
 18 inserting “NURSING FACILITY EM-
 19 PLOYEE REGISTRY”;

20 (II) in subparagraph (A)—

21 (aa) by striking “By not
 22 later than January 1, 1989, the”
 23 and inserting “The”;

24 (bb) by striking “a registry
 25 of all individuals” and inserting

1 “a registry of (I) all individuals”;
2 and

3 (cc) by inserting before the
4 period “, and (II) all other nurs-
5 ing facility employees with re-
6 spect to whom the State has
7 made a finding described in sub-
8 paragraph (B)”;

9 (III) in subparagraph (B), by
10 striking “involving an individual listed
11 in the registry” and inserting “involv-
12 ing a nursing facility employee”; and

13 (IV) in subparagraph (C), by
14 striking “nurse aide” and inserting
15 “nursing facility employee or appli-
16 cant for employment”; and

17 (ii) in subsection (g)(1)—

18 (I) in subparagraph (C)—

19 (aa) in the first sentence, by
20 striking “nurse aide” and insert-
21 ing “nursing facility employee”;
22 and

23 (bb) in the third sentence,
24 by striking “nurse aide” each

1 place it appears and inserting
2 “nursing facility employee”; and
3 (II) in subparagraph (D), by
4 striking “nurse aide” each place it ap-
5 pears and inserting “nursing facility
6 employee”.

7 (B) FEDERAL AND STATE REQUIREMENT
8 TO CONDUCT BACKGROUND CHECKS.—Section
9 1919(e) of the Social Security Act (42 U.S.C.
10 1396r(e)) is amended by adding at the end the
11 following:

12 “(8) FEDERAL AND STATE REQUIREMENTS
13 CONCERNING CRIMINAL BACKGROUND CHECKS ON
14 NURSING FACILITY EMPLOYEES.—

15 “(A) IN GENERAL.—Upon receipt of a re-
16 quest by a nursing facility pursuant to sub-
17 section (b)(8) that is accompanied by the infor-
18 mation described in subclauses (II) through
19 (IV) of subsection (b)(8)(A)(ii), a State, after
20 checking appropriate State records and finding
21 no disqualifying information (as defined in sub-
22 section (b)(8)(F)(ii)), shall submit such request
23 and information to the Attorney General and
24 shall request the Attorney General to conduct a
25 search and exchange of records with respect to

1 the individual as described in subparagraph
2 (B).

3 “(B) SEARCH AND EXCHANGE OF
4 RECORDS BY ATTORNEY GENERAL.—Upon re-
5 ceipt of a submission pursuant to subparagraph
6 (A), the Attorney General shall direct a search
7 of the records of the Federal Bureau of Inves-
8 tigation for any criminal history records cor-
9 responding to the fingerprints or other positive
10 identification information submitted. The Attor-
11 ney General shall provide any corresponding in-
12 formation resulting from the search to the
13 State.

14 “(C) STATE REPORTING OF INFORMATION
15 TO NURSING FACILITY.—Upon receipt of the in-
16 formation provided by the Attorney General
17 pursuant to subparagraph (B), the State
18 shall—

19 “(i) review the information to deter-
20 mine whether the individual has any con-
21 viction for a relevant crime (as defined in
22 subsection (b)(8)(F)(i));

23 “(ii) report to the nursing facility the
24 results of such review; and

1 “(iii) in the case of an individual with
2 a conviction for a relevant crime, report
3 the existence of such conviction of such in-
4 dividual to the database established under
5 section 1128E.

6 “(D) FEES FOR PERFORMANCE OF CRIMI-
7 NAL BACKGROUND CHECKS.—

8 “(i) AUTHORITY TO CHARGE FEES.—

9 “(I) ATTORNEY GENERAL.—The
10 Attorney General may charge a fee to
11 any State requesting a search and ex-
12 change of records pursuant to this
13 paragraph and subsection (b)(8) for
14 conducting the search and providing
15 the records. The amount of such fee
16 shall not exceed the lesser of the ac-
17 tual cost of such activities or \$50.
18 Such fees shall be available to the At-
19 torney General, or, in the Attorney
20 General’s discretion, to the Federal
21 Bureau of Investigation, until ex-
22 pended.

23 “(II) STATE.—A State may
24 charge a nursing facility a fee for ini-
25 tiating the criminal background check

1 under this paragraph and subsection
2 (b)(8), including fees charged by the
3 Attorney General, and for performing
4 the review and report required by sub-
5 paragraph (C). The amount of such
6 fee shall not exceed the actual cost of
7 such activities.

8 “(ii) PROHIBITION ON CHARGING AP-
9 PPLICANTS OR EMPLOYEES.—An entity may
10 not impose on an applicant for employment
11 or an employee any charges relating to the
12 performance of a background check under
13 this paragraph.

14 “(E) REGULATIONS.—

15 “(i) IN GENERAL.—In addition to the
16 Secretary’s authority to promulgate regula-
17 tions under this title, the Attorney Gen-
18 eral, in consultation with the Secretary,
19 may promulgate such regulations as are
20 necessary to carry out the Attorney Gen-
21 eral’s responsibilities under this paragraph
22 and subsection (b)(8), including regula-
23 tions regarding the security, confiden-
24 tiality, accuracy, use, destruction, and dis-

1 semination of information, audits and rec-
2 ordkeeping, and the imposition of fees.

3 “(ii) APPEAL PROCEDURES.—The At-
4 torney General, in consultation with the
5 Secretary, shall promulgate such regula-
6 tions as are necessary to establish proce-
7 dures by which an applicant or employee
8 may appeal or dispute the accuracy of the
9 information obtained in a background
10 check conducted under this paragraph. Ap-
11 peals shall be limited to instances in which
12 an applicant or employee is incorrectly
13 identified as the subject of the background
14 check, or when information about the ap-
15 plicant or employee has not been updated
16 to reflect changes in the applicant’s or em-
17 ployee’s criminal record.

18 “(F) REPORT.—Not later than 2 years
19 after the date of enactment of this paragraph,
20 the Attorney General shall submit a report to
21 Congress on—

22 “(i) the number of requests for
23 searches and exchanges of records made
24 under this section;

1 “(ii) the disposition of such requests;
2 and
3 “(iii) the cost of responding to such
4 requests.”.

5 (2) MEDICARE PROGRAM.—

6 (A) EXPANSION OF STATE REGISTRY TO
7 COLLECT INFORMATION ABOUT SKILLED NURS-
8 ING FACILITY EMPLOYEES OTHER THAN NURSE
9 AIDES.—Section 1819 of the Social Security
10 Act (42 U.S.C. 1395i-3) is amended—

11 (i) in subsection (e)(2)—

12 (I) in the paragraph heading, by
13 striking “NURSE AIDE REGISTRY” and
14 inserting “SKILLED NURSING CARE
15 EMPLOYEE REGISTRY”;

16 (II) in subparagraph (A)—

17 (aa) by striking “By not
18 later than January 1, 1989, the”
19 and inserting “The”;

20 (bb) by striking “a registry
21 of all individuals” and inserting
22 “a registry of (I) all individuals”;
23 and

24 (cc) by inserting before the
25 period “, and (II) all other

1 skilled nursing facility employees
2 with respect to whom the State
3 has made a finding described in
4 subparagraph (B)’’;

5 (III) in subparagraph (B), by
6 striking ‘‘involving an individual listed
7 in the registry’’ and inserting ‘‘involv-
8 ing a skilled nursing facility em-
9 ployee’’; and

10 (IV) in subparagraph (C), by
11 striking ‘‘nurse aide’’ and inserting
12 ‘‘skilled nursing facility employee or
13 applicant for employment’’; and

14 (ii) in subsection (g)(1)—

15 (I) in subparagraph (C)—

16 (aa) in the first sentence, by
17 striking ‘‘nurse aide’’ and insert-
18 ing ‘‘skilled nursing facility em-
19 ployee’’; and

20 (bb) in the third sentence,
21 by striking ‘‘nurse aide’’ each
22 place it appears and inserting
23 ‘‘skilled nursing facility em-
24 ployee’’; and

(II) in subparagraph (D), by striking “nurse aide” each place it appears and inserting “skilled nursing facility employee”.

(B) FEDERAL AND STATE REQUIREMENT TO CONDUCT BACKGROUND CHECKS.—Section 1819(e) of the Social Security Act (42 U.S.C. 1395i–3(e)) is amended by adding at the end the following:

“(6) FEDERAL AND STATE REQUIREMENTS CONCERNING CRIMINAL BACKGROUND CHECKS ON SKILLED NURSING FACILITY EMPLOYEES.—

“(A) IN GENERAL.—Upon receipt of a request by a skilled nursing facility pursuant to subsection (b)(8) that is accompanied by the information described in subclauses (II) through (IV) of subsection (b)(8)(A)(ii), a State, after checking appropriate State records and finding no disqualifying information (as defined in subsection (b)(8)(F)(ii)), shall submit such request and information to the Attorney General and shall request the Attorney General to conduct a search and exchange of records with respect to the individual as described in subparagraph (B).

1 “(B) SEARCH AND EXCHANGE OF
2 RECORDS BY ATTORNEY GENERAL.—Upon re-
3 ceipt of a submission pursuant to subparagraph
4 (A), the Attorney General shall direct a search
5 of the records of the Federal Bureau of Inves-
6 tigation for any criminal history records cor-
7 responding to the fingerprints or other positive
8 identification information submitted. The Attor-
9 ney General shall provide any corresponding in-
10 formation resulting from the search to the
11 State.

12 “(C) STATE REPORTING OF INFORMATION
13 TO SKILLED NURSING FACILITY.—Upon receipt
14 of the information provided by the Attorney
15 General pursuant to subparagraph (B), the
16 State shall—

17 “(i) review the information to deter-
18 mine whether the individual has any con-
19 viction for a relevant crime (as defined in
20 subsection (b)(8)(F)(i));

21 “(ii) report to the skilled nursing fa-
22 cility the results of such review; and

23 “(iii) in the case of an individual with
24 a conviction for a relevant crime, report
25 the existence of such conviction of such in-

dividual to the database established under
section 1128E.

“(D) FEES FOR PERFORMANCE OF CRIMINAL
BACKGROUND CHECKS.—

“(i) AUTHORITY TO CHARGE FEES.—

“(I) ATTORNEY GENERAL.—The
Attorney General may charge a fee to
any State requesting a search and ex-
change of records pursuant to this
paragraph and subsection (b)(8) for
conducting the search and providing
the records. The amount of such fee
shall not exceed the lesser of the ac-
tual cost of such activities or \$50.
Such fees shall be available to the At-
torney General, or, in the Attorney
General’s discretion, to the Federal
Bureau of Investigation until ex-
pended.

“(II) STATE.—A State may
charge a skilled nursing facility a fee
for initiating the criminal background
check under this paragraph and sub-
section (b)(8), including fees charged
by the Attorney General, and for per-

1 forming the review and report re-
2 quired by subparagraph (C). The
3 amount of such fee shall not exceed
4 the actual cost of such activities.

5 “(ii) PROHIBITION ON CHARGING AP-
6 PLICANTS OR EMPLOYEES.—An entity may
7 not impose on an applicant for employment
8 or an employee any charges relating to the
9 performance of a background check under
10 this paragraph.

11 “(E) REGULATIONS.—

12 “(i) IN GENERAL.—In addition to the
13 Secretary’s authority to promulgate regula-
14 tions under this title, the Attorney Gen-
15 eral, in consultation with the Secretary,
16 may promulgate such regulations as are
17 necessary to carry out the Attorney Gen-
18 eral’s responsibilities under this paragraph
19 and subsection (b)(9), including regula-
20 tions regarding the security confidentiality,
21 accuracy, use, destruction, and dissemina-
22 tion of information, audits and record-
23 keeping, and the imposition of fees.

24 “(ii) APPEAL PROCEDURES.—The At-
25 torney General, in consultation with the

1 Secretary, shall promulgate such regula-
2 tions as are necessary to establish proce-
3 dures by which an applicant or employee
4 may appeal or dispute the accuracy of the
5 information obtained in a background
6 check conducted under this paragraph. Ap-
7 peals shall be limited to instances in which
8 an applicant or employee is incorrectly
9 identified as the subject of the background
10 check, or when information about the ap-
11 plicant or employee has not been updated
12 to reflect changes in the applicant's or em-
13 ployee's criminal record.

14 “(F) REPORT.—Not later than 2 years
15 after the date of enactment of this paragraph,
16 the Attorney General shall submit a report to
17 Congress on—

18 “(i) the number of requests for
19 searches and exchanges of records made
20 under this section;

21 “(ii) the disposition of such requests;
22 and

23 “(iii) the cost of responding to such
24 requests.”.

1 (c) APPLICATION TO OTHER ENTITIES PROVIDING
2 LONG-TERM CARE SERVICES.—

3 (1) MEDICAID.—Section 1902(a) of the Social
4 Security Act (42 U.S.C. 1396a) is amended—

5 (A) in paragraph (65), by striking the pe-
6 riod and inserting “; and”; and

7 (B) by inserting after paragraph (65) the
8 following:

9 “(66) provide that any entity that is eligible to
10 be paid under the State plan for providing long-term
11 care services for which medical assistance is avail-
12 able under the State plan to individuals requiring
13 long-term care complies with the requirements of
14 subsections (b)(8) and (e)(8) of section 1919.”.

15 (2) MEDICARE.—Part D of title XVIII of the
16 Social Security Act (42 U.S.C. 1395x et seq.) is
17 amended by adding at the end the following:

18 “APPLICATION OF SKILLED NURSING FACILITY PREVEN-
19 TIVE ABUSE PROVISIONS TO ANY PROVIDER OF
20 SERVICES OR OTHER ENTITY PROVIDING LONG-TERM
21 CARE SERVICES

22 “SEC. 1897. The requirements of subsections (b)(8)
23 and (e)(6) of section 1819 shall apply to any provider of
24 services or any other entity that is eligible to be paid under
25 this title for providing long-term care services to an indi-
26 vidual entitled to benefits under part A or enrolled under

1 part B (including an individual provided with a
 2 Medicare+Choice plan offered by a Medicare+Choice or-
 3 ganization under part C).”.

4 (d) REIMBURSEMENT OF REASONABLE COSTS FOR
 5 BACKGROUND CHECKS.—The Secretary of Health and
 6 Human Services shall factor into any payment system
 7 under titles XVIII and XIX of the Social Security Act the
 8 reasonable costs of the requirements of sections
 9 1819(b)(8) and 1919(b)(8) of such Act, as added by this
 10 section, incurred by any entity subject to such require-
 11 ments.

12 **SEC. 3. INCLUSION OF ABUSIVE NURSING FACILITY WORK-**
 13 **ERS IN THE DATABASE ESTABLISHED AS**
 14 **PART OF NATIONAL HEALTH CARE FRAUD**
 15 **AND ABUSE DATA COLLECTION PROGRAM.**

16 (a) INCLUSION OF ABUSIVE ACTS WITHIN A LONG-
 17 TERM CARE FACILITY.—Section 1128E(g)(1)(A) of the
 18 Social Security Act (42 U.S.C. 1320a–7e(g)(1)(A)) is
 19 amended—

20 (1) by redesignating clause (v) as clause (vi);

21 and

22 (2) by inserting after clause (iv), the following:

23 “(v) A finding of abuse or neglect of
 24 a patient or a resident of a long-term care

1 facility, or misappropriation of such a pa-
2 tient's or resident's property.”.

3 (b) COVERAGE OF LONG-TERM CARE FACILITY EM-
4 PLOYEES.—Section 1128E(g)(2) of the Social Security
5 Act (42 U.S.C. 1320a-7e(g)(2)) is amended by inserting
6 “, and includes any individual of a long-term care facility
7 (other than any volunteer) that has direct access to a pa-
8 tient or resident of such a facility under an employment
9 or other contract, or both, with the facility (including indi-
10 viduals who are licensed or certified by the State to pro-
11 vide services at the facility, and nonlicensed individuals,
12 as defined by the Secretary, providing services at the facil-
13 ity, including nurse assistants, nurse aides, home health
14 aides, and personal care workers and attendants)” before
15 the period.

16 (c) REPORTING BY LONG-TERM CARE FACILITIES.—

17 (1) IN GENERAL.—Section 1128E(b)(1) of the
18 Social Security Act (42 U.S.C. 1320a-7e(b)(1)) is
19 amended by striking “and health plan” and insert-
20 ing “, health plan, and long-term care facility”.

21 (2) CORRECTION OF INFORMATION.—Section
22 1128E(c)(2) of the Social Security Act (42 U.S.C.
23 1320a-7e(c)(2)) is amended by striking “and health
24 plan” and inserting “, health plan, and long-term
25 care facility”.

1 (d) ACCESS TO REPORTED INFORMATION.—Section
2 1128E(d)(1) of the Social Security Act (42 U.S.C. 1320a–
3 7e(d)(1)) is amended by striking “and health plans” and
4 inserting “, health plans, and long-term care facilities”.

5 (e) MANDATORY CHECK OF DATABASE BY LONG-
6 TERM CARE FACILITIES.—Section 1128E(d) of the Social
7 Security Act (42 U.S.C. 1320a–7e(d)) is amended by add-
8 ing at the end the following:

9 “(3) MANDATORY CHECK OF DATABASE BY
10 LONG-TERM CARE FACILITIES.—A long-term care fa-
11 cility shall check the database maintained under this
12 section prior to hiring under an employment or other
13 contract, or both, any individual as an employee of
14 such a facility who will have direct access to a pa-
15 tient or resident of the facility (including individuals
16 who are licensed or certified by the State to provide
17 services at the facility, and nonlicensed individuals,
18 as defined by the Secretary, that will provide serv-
19 ices at the facility, including nurse assistants, nurse
20 aides, home health aides, and personal care workers
21 and attendants).”.

22 (f) DEFINITION OF LONG-TERM CARE FACILITY.—
23 Section 1128E(g) of the Social Security Act (42 U.S.C.
24 1320a–7e(g)) is amended by adding at the end the fol-
25 lowing:

1 “(6) LONG-TERM CARE FACILITY.—The term
 2 ‘long-term care facility’ means a skilled nursing fa-
 3 cility (as defined in section 1819(a)), a nursing facil-
 4 ity (as defined in section 1919(a)), a home health
 5 agency, a hospice facility, an intermediate care facil-
 6 ity for the mentally retarded (as defined in section
 7 1905(d)), or any other facility that provides long-
 8 term care services and receives payment for such
 9 services under the medicare program under title
 10 XVIII or the medicaid program under title XIX.”.

11 (g) AUTHORIZATION OF APPROPRIATIONS.—There is
 12 authorized to be appropriated to carry out the amend-
 13 ments made by this section, \$10,200,000 for fiscal year
 14 2000.

15 **SEC. 4. PREVENTION AND TRAINING DEMONSTRATION**
 16 **PROJECT.**

17 (a) ESTABLISHMENT.—The Secretary of Health and
 18 Human Services shall establish a demonstration program
 19 to provide grants to develop information on best practices
 20 in patient abuse prevention training (including behavior
 21 training and interventions) for managers and staff of hos-
 22 pital and health care facilities.

23 (b) ELIGIBILITY.—To be eligible to receive a grant
 24 under subsection (a), an entity shall be a public or private
 25 nonprofit entity and prepare and submit to the Secretary

4 (c) USE OF FUNDS.—Amounts received under a
5 grant under this section shall be used to—

(2) examine patient care issues relating to regulatory oversight, community involvement, and facility staffing and management with a focus on staff training, staff stress management, and staff supervision;

21 (4) identify and disseminate best practices for
22 preventing and reducing patient abuse.

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1 **SEC. 5. EFFECTIVE DATE.**

2 The provisions of and amendments made by the Act
3 shall apply, without regard to whether implementing regu-
4 lations are in effect, to any individual applying for employ-
5 ment or hired for such employment—

6 (1) by any skilled nursing facility (as defined in
7 section 1819(a) of the Social Security Act) or any
8 nursing facility (as defined in section 1919(a) of
9 such Act), on or after the date which is 6 months
10 after the date of enactment of this Act,

11 (2) by any home health agency, on or after the
12 date which is 12 months after such date of enact-
13 ment, and

14 (3) by any hospice facility, any intermediate
15 care facility for the mentally retarded (as defined in
16 section 1905(d) of the Social Security Act), or any
17 other facility that provides long-term care services
18 and receives payment for such services under the
19 medicare program under title XVIII of such Act or
20 the medicaid program under title XIX of such Act,
21 on or after the date which is 18 months after such
22 date of enactment.

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